

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE:	:	CHAPTER 7
US WOOD PRODUCTS, INC.,	:	Case No. 00-03198 (MFW)
Debtor.	:	
MONTAGUE S. CLAYBROOK,	:	
CHAPTER 7 TRUSTEE FOR THE ESTATE	:	
OF US WOOD PRODUCTS, INC.,	:	
Plaintiff,	:	Adversary No. 03-53656
v.	:	Civil Action No. 1:04-cv-01265 (SLR)
PANOLAM INDUSTRIES, INC.,	:	
Defendant.	:	

**APPELLANT’S DESIGNATION OF CONTENTS OF RECORD  
AND STATEMENT OF ISSUES ON APPEAL**

Appellant, Montague S. Claybrook (the “Appellant”), Chapter 7 Trustee for the estate of US Wood Products, Inc., by Notice of Appeal filed on April 10, 2007, appealed the Memorandum Order of Sue L. Robinson, Chief United States District Court Judge, dated March 13, 2007, approving the Motion for Reargument of Panolam Industries, Inc. (the “Appellee”). Pursuant to Federal Rule of Appellate Procedure 6(b)(2)(B) and Federal Rule of Bankruptcy Procedure 8006, Appellant hereby designates the following items to be included in the Record on Appeal:

**A. Designation of Items to be Included in the Record on Appeal**

**Bankruptcy Adversary No. 03-53656 (MFW)**

1. Bankruptcy Court Adversary Proceeding Docket Sheet [No Docket No.].
2. Complaint [Docket No. 1].

3. Defendant Panolam Industries, Inc.'s Motion to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 2].
4. Notice of Defendant Panolam Industries, Inc.'s Motion to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 2].
5. Proposed Form of Order Granting Defendant Panolam Industries, Inc.'s Motion to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 2].
6. Defendant Panolam Industries, Inc.'s Memorandum of Law in Support of Its Motion to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 3].
7. Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 6].
8. Exhibit A to Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations: Transcript of July 29, 2002 Hearing before the Honorable Sue Robinson in Bankruptcy Proceeding No. 00-03198 [Docket No. 6].
9. Exhibit B to Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations: July 29, 2002 Order Converting the Debtor's Case to Chapter 7 in Bankruptcy Proceeding No. 00-03198 [Docket No. 6].
10. Exhibit C to Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations: Notice of Appointment of Chapter 7 Trustee dated July 30, 2002 in Bankruptcy Proceeding No. 00-03198 [Docket No. 6].
11. Memorandum of Law In Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 6].
12. Supplemental Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 7].
13. Exhibit A to Supplemental Certification of Counsel Regarding Opposition to Dismiss the Trustee's Preference Complaint as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations: Opinion Burch v. Georgia-Pacific Corp.

(In re Allied Digital Technologies Corp.), \_\_ B.R. \_\_, 2003 WL 22466224 (Bankr. D.Del. October 31, 2003) [Docket No. 7].

14. Defendants' Reply In Support of Their Motions to Dismiss the Complaints as Barred by the Bankruptcy Code Section 546(a)(1) Statute of Limitations [Docket No. 8].
15. Opinion Denying Motion to Dismiss Adversary Proceeding, dated August 20, 2004 [Docket No. 11].
16. Order Denying Motion to Dismiss Adversary Proceeding, dated August 20, 2004 April 3, 2006 [Docket No. 12].
17. Order of District Court affirming Bankruptcy Court Orders, dated April 3, 2006 [Docket No. 24].

**District Court Civil Action No. 1:04-cv-01265 (SLR)**

18. District Court Proceeding Docket Sheet [No Docket No.].
19. Notice of Appeal filed in Bankruptcy Court [Docket No. 3].
20. Joint Motion by Georgia-Pacific, Atlantic Veneer Corp., Panolam Industries, Liberty Woods International for Leave to Appeal, with Proposed Order for Leave to Appeal [Docket No. 1].
21. Joint Memorandum of Law by Georgia-Pacific, Atlantic Veneer Corp., Panolam Industries, Liberty Woods International, in Support of Motion for Leave to Appeal [Docket No. 2].
22. Case Assigned to Judge Sue. L. Robinson [Docket No. 4].
23. Notice of Docketing of Bankruptcy Record on Appeal [Docket No. 5].
24. Designation by Georgia-Pacific, Atlantic Veneer Corp., Panolam Industries, Liberty Woods International of Items for the Record on Appeal and Statement of Issues on Appeal [Docket No. 6].
25. Letter to Clerk from V. Poppiti Regarding Status of Each Appellant [Docket No. 7].
26. Notice of Stipulation and Voluntary Dismissal of Appeal by Atlantic Veneer Corporation and Georgia-Pacific [Docket No. 8].
27. Notice of Stipulation and Voluntary Dismissal of Appeal by Liberty Woods International Inc. [Docket No. 9].

28. Letter to Chief Judge Sue L. Robinson from James C. Carignan Regarding Stipulated Briefing Schedule [Docket No. 10].
29. Stipulated Briefing Schedule Regarding Appeal of Bankruptcy Court's Order Denying Consolidated Defendants' Motions to Dismiss the Trustee's Preference Complaints as Barred by the Bankruptcy Code § 546(A)(1) Statute of Limitations [Docket No. 11].
30. Opening Brief of Appellant, Panolam Industries, Inc. [Docket No. 12].
31. Answering Brief of Appellee Chapter 7 Trustee, Montague S. Claybrook [Docket No. 13].
32. Letter to Chief Judge Robinson from James C. Carignan, Esq. regarding Panolam Industries, Inc. et al. v. Claybrook [Docket No. 14].
33. Order, Affirming the August 20, 2004 Opinion and Order of the Bankruptcy Court [Docket No. 15].
34. Motion for Reargument by Appellant, Panolam Industries, Inc. [Docket No. 16].
35. Answer of Appellee Chapter 7 Trustee, Montague S. Claybrook to Motion for Reargument [Docket No. 17].
36. Memorandum Order, Granting Motion for Reargument and Reversing the August 20, 2004 Opinion and Order of the Bankruptcy Court [Docket No. 18].
37. Notice of Appeal to the United States Court of Appeals for the Third Circuit [Docket No. 19].

**B. Statement of Issues to be Presented Upon Appeal**

The Appellant raises the following issues on appeal:

1. Whether the United States District Court for the District of Delaware erred in granting the Appellee's Motion for Reargument.
2. Whether the United States District Court for the District of Delaware erred in applying the decision of American Pad & Paper Co. 2007 WL 624345 (3d Cir. March 2, 2007) to reverse its prior order denying the Appellee's motion to dismiss.
3. Whether the United States District Court for the District of Delaware erred in determining that the language of 11 U.S.C. § 546 is unambiguous.

4. Whether the United States District Court for the District of Delaware erred in determining that the Appellant did not become the permanent trustee under 11 U.S.C. § 702(d) until after the expiration of the two year statute of limitations period under 11 U.S.C. § 546.
5. Whether the United States District Court for the District of Delaware erred in determining that the appointment of a trustee under 11 U.S.C. § 702(d) does not trigger an additional one-year period under Section 546(a).

**FOX ROTHSCHILD LLP**

By: /s/ Michael G. Menkowitz  
Michael G. Menkowitz, Esquire  
Magdalena Schardt, Esquire  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Tel (215) 299-2000/Fax (215) 299-2150  
mmenkowitz@foxrothschild.com  
mschardt@foxrothschild.com

Attorneys for Appellant, Montague Claybrook,  
Chapter 7 Trustee for the estate of US Wood Products, Inc.

Dated: April 20, 2007